UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VI
DALLAS, TEXAS

IN THE MATTER OF:	§	
	§	
NEW ENGLAND MUTUAL LIFE INSURANCE COMPANY	§	
	§	
A-INTERNATIONAL DISTRIBUTION CORPORATION, d/b/a INTERNATIONAL DISTRIBUTION CORPORATION	§	
	§	
HOUSTON TRANSFER & STORAGE	§	
	§	DOCKET NUMBER
RESPONDENTS	§	
	§	CERCLA-VI-05-88
REGARDING THE	§	
	§	
A-INTERNATIONAL DISTRIBUTION (AID) WAREHOUSE SITE HOUSTON, HARRIS COUNTY, TEXAS	§	
	§	
PROCEEDING UNDER §106(a) OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980 (42 U.S.C. §9606(a)), AS AMENDED.	§	

INTERNATIONAL DISTRIBUTION
CORPORATION REQUEST FOR MIXED FUNDING

Pursuant to §122(b) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9622(b), International Distribution Corporation ("IDC"), a respondent herein, hereby requests EPA to authorize the Hazardous Substance Response Trust Fund ("Fund") to contribute at least fifty percent (50%) of the response

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costs to be incurred in removing hazardous substances and in taking any other necessary remedial actions ultimately determined to be necessary at the AID Warehouse Site arising out of the captioned proceeding. This mixed funding request is being made as a preauthorization request in line with EPA written policies. See, e.g., October 20, 1987 memorandum from J. Winston Porter, Assistant Administrator, Office of Solid Waste and Emergency Response, and Thomas L. Adams, Jr., Assistant Administrator, Office of Enforcement and Compliance Monitoring, to Regional Administrators. The request is being made to promote the public interest, to expedite removal activities and to insure fair and equitable treatment of IDC under the circumstances of this case. As detailed below, the Fund's commitment should be relatively small, and there are other potentially responsible parties ("PRPs") who can and should be made to reimburse IDC and the Fund.

I. BACKGROUND

This proceeding concerns drums of chemical materials that were originally received on March 21, 1986, at the AID Warehouse Site as chemical product consigned to SCI Equipment & Technology, Ltd. (also doing business as the Mt. Vernon Trade Group). IDC, the operator of the warehouse, was under the understanding that it would temporarily store the

drums before they were transported for export overseas. IDC's initial involvement came through a telephone call from New York from a Mr. Hugh Wright, who identified himself as being affiliated with the Mt. Vernon Trade Group and who requested IDC to pick up the drums from another warehouse in the Houston area, Global Southport. At no time did Mr. Wright, anyone with SCI Equipment & Technology, Ltd. or Mt. Vernon Trade Group or, for that matter, Global Southport Warehouse, ever indicate that the drums contained anything but standard chemical product material, nor did anyone indicate the existence of any prior EPA involvement with the drums. IDC, which was never paid for its warehouse services, subsequently learned from Mr. Don Rebish with Delta Bonded Warehouse (affiliated with Global Southport) that the contents of most of the drums were junk and that Global Southport had been forced by EPA to move the drums from their property. Attempts to contact SCI Equipment & Technology, Ltd. and/or the Mt. Vernon Trade Group resulted in no response from the drum owners. In the fall of 1986, IDC itself contacted the Texas Water Commission and EPA to inform them of the presence of the drums and to seek their assistance.

IDC has subsequently learned through EPA memoranda and other sources that the drums were originally packaged in

1984 by the Colorado Organic Chemical Company and were sold to SCI Equipment & Technology, Ltd. under pressure from Region VIII of EPA, which was pursuing site investigation, remediation and enforcement activity against Colorado Organic Chemical Company in Colorado. The drums were shipped by the Burlington Northern Railroad to Texas in August of 1984. In transit, several of the containers were broken, and upon arrival to Houston, Texas, leaking material was discovered. At that time, Region VI Emergency Response personnel responded to the incident with the Houston Fire Department's Hazardous Materials Unit. During the cleanup, all materials were removed from the shipment trailers and overpacked in 85-gallon drums by a contractor hired by the then responsible parties. These products were later transferred with EPA's knowledge to the Global Southport Warehouse for storage and supposed subsequent shipment overseas.

EPA-Region VI was again notified of the drums in 1986, when two complaints were registered with the Texas Water Commission. The first complaint was by the owner of Global Southport Warehouse, requesting that action be taken to remove the abandoned hazardous materials from the warehouse. Mr. Charles Colbert of SCI Equipment & Technology, Ltd. was contacted, and he assured that the drums would be removed in a maximum of 120 days. IDC was then contacted by Mr. Wright

on behalf of the Mt. Vernon Trade Group and SCI. IDC took possession on the drums without knowledge of their background, resulting in its own victimization. When IDC learned of the true nature of the drums, it made the second complaint in 1986 to TWC and EPA. IDC has subsequently learned that the principals of SCI Equipment & Technology, Ltd., Charles and Jack Colbert, have been convicted of criminal fraud in New York concerning their chemical export business.

According to a Region VI action memorandum from Patrick L. Hammack to Robert E. Layton, Jr.,

> "EPA has been aware of the drums since the original spill incident. It was originally decided that the materials were product for shipment overseas and were in a stable condition which did not represent an imminent and substantial endangerment. The Emergency Response Branch turned the case over to the RCRA Branch who's [sic] efforts to manage the material were unsuccessful since it was not classified as waste, but product."

A few of the drums originally taken by IDC (26 drums of chlorobenzolate and 5 drums of tillum) were sold as product; however, despite extensive efforts through chemical brokers, IDC has not been able to find any market outlet for the remaining 91 drums. In the interest of improving security and containment, IDC has placed the remaining 91 drums, which had been overpacked in 1984, inside an enclosed trailer, which itself is located inside IDC's enclosed warehouse. No

leaks or other releases to the environment have been detected. IDC continues to take the position that, while the drums need to be removed and properly disposed of, there does not exist an imminent or substantial threat of a release to the environment as the drums are now situated.

Aside from contacting the Texas Water Commission and Region VI, IDC has also been active in contacting Region VIII of EPA in order to secure available sampling information on the drums (which Region VIII has indicated is available) and in contacting waste disposal companies to get bids for the removal and legal disposal of the drums. Region VI has previously been provided with a third-party written cost estimate of $22,000 for sampling and off-site disposal of the drums (said estimate being premised upon the drum contents actually being the same as previously listed in information earlier provided to IDC).

IDC itself is a small, privately-owned business established in 1978 by Mr. Douglas Walt. IDC has a net worth of approximately $200,000.

II. FACTORS SUPPORTING MIXED FUNDING

Congress expressly authorized mixed funding in §122(b) of CERCLA to encourage expedited settlement and cleanup in Superfund response situations. Mixed funding is applicable to emergency removal actions and should be given serious

consideration were supportive factors are present. In the instant case, factors favoring mixed funding are the questionable nature of IDC's liability and agency jurisdiction (i.e., is there an imminent and substantial threat of a release to the environment?), IDC's innocence and continued good faith cooperation and efforts to protect human health and the environment, EPA's own failure, despite past knowledge of the drums and its own active involvement starting at the point of their origination, to adequately insure that the drums were properly dealt with (which, in turn, allowed the problem to persist and result in IDC's victimization), the fact that the Fund's commitment to pre-authorization mixed funding will be relatively small and, finally, the fact that EPA can apparently recoup in the money it spends from SCI Equipment & Technology, Ltd., Mt. Vernon Trade Group, individuals involved with those companies and a trust fund set up in Colorado to deal with the environmental legacies by the Colorado Organic Chemical Company and its principal, Mr. Phillip Mozer.

Considering these factors individually, it should first be recognized that CERCLA only gives EPA jurisdiction to take or order response activity when there is an actual release or substantial threat of release into the environment which may pose an imminent and substantial

endangerment to public health or welfare or the environment. See 42 U.S.C. §§9604 and 9606. The drums in question were overpacked in 1984 and were determined at that time by Region VI's Emergency Response Branch to be in a "stable condition which did not represent an imminent and substantial endangerment." See Action Memorandum of Patrick L. Hammack, supra, at p. 3. The overpacked drums were subsequently moved first to Global Southport Warehouse and then on to IDC without being mixed or otherwise significantly disturbed. IDC, in turn, has placed the drums inside an enclosed trailer inside its warehouse, which has a concrete floor, enclosing walls and a roof. While Region VI has apparently detected vapors emanating from the drums, there is no data to indicate that the vapors are escaping the enclosing trailer, much less the warehouse building, and going into the environment. It should be recognized that, under these circumstances, a release to the environment has not been documented, nor has any significant threat of a release to the environment outside IDC's warehouse been established. Chemical vapor concentrations, if any, outside the trailer are de minimis and are suspected to be non-detectable. The drums have been safely stored for over two years at the warehouse, and there is no documented threat of a chemical reaction leading to a threat of fire or explosion. In their

present location and containment, it can only be concluded that the overpacked drums pose no imminent or substantial threat to human health or the environment outside IDC's warehouse building.

As such, EPA's jurisdiction to issue the pending Section 106 CERCLA Order is far from certain. IDC's liability to respond to the order and be responsible for costs is likewise improbable. Thus, one of the major identified factors favoring mixed funding (significant litigation risk) is present in this case.

Another identified factor favoring mixed funding is IDC's own innocence and good faith actions, equitable factors that should not be overlooked. IDC did not knowingly get involved with waste materials, but instead was duped into taking possession of the drums and never received any compensation for its storage services. IDC itself notified the TWC and EPA once it became aware of the true nature of the material and has continued to cooperate with government authorities while at the same time safely storing the drums until a proper disposition can be made.

IDC's good faith efforts should be considered in comparison with EPA's own shortcomings in tracking and handling the drums since 1984. Region VIII was apparently instrumental in originating the shipment of the drums from Colorado

Organic Chemical Company through SCI Equipment & Technology, Ltd. and obviously failed to confirm a proper disposition of materials it knew to be environmentally sensitive. Region VI itself became involved in 1984 with the drums following their leakage during rail shipment to Houston, allowing the drummed chemicals to be moved for further unmonitored storage and shipment. This involvement by Region VI and TWC continued even when the drums were considered abandoned at the Global Southport Warehouse. Thus, though EPA has been actively aware of the presence of hazardous chemicals being shipped from an enforcement site with no established product market, the agency has condoned handling which led to the present predicament, failing to notify or warn innocent recipients (such as IDC) of the drums' background and potential waste-like nature and failing to track the material "from cradle to grave."

Turning to consideration of the amount of IDC's settlement offer (i.e., up to 50% of the presently estimated cost of $22,000), such an offer should be recognized, particularly in view of the foregoing discussion of equitable factors, as being a good faith proposal which will not significantly burden the Fund but which will, in view of the relative size of IDC, be a substantial commitment on its part.

Finally, it should be recognized that there are other PRPs (SCI Equipment & Technology, Ltd., Mt. Vernon Trading Group, Charles Colbert, Jack Colbert, Hugh Wright and possibly Colorado Organic Chemical Company and Phillip Mozer) who should bear most of the responsibility for any necessary response activity and who may well be in a position to compensate the Fund for any preauthorization mixed funding commitment made to IDC. At the very least, Region VI should actively investigate these other PRPs to determine the extent of their corporate and personal financial abilities. For its part, IDC has already learned from Region VIII that a trust fund was established in Colorado by Colorado Organic Chemical Company and/or Phillip Mozer, both of whom arguably conspired with SCI Equipment & Technology, Ltd. in connection with the shipment of the drums, which trust fund may be tapped upon by the Fund for recoupment purposes. It follows that there may be a chance that EPA will eventually secure any required response without any loss to the Fund.

III. CONCLUSION

EPA "encourages the use of mixed funding to promote settlement and hazardous site cleanup." October 20, 1987 Memorandum from J. Winston Porter and Thomas L. Adams, supra, at p. 3. Identified guidance factors are present in this case to support mixed funding. In the interest of

expediting any necessary response activity, the public interest will be best served through approval of this request for preauthorization mixed funding.

Respectfully submitted,

CRAIN, CATON & JAMES

By: _____

Robert E. "Robin" Morse, III
3300 Two Houston Center
Houston, Texas 77010
(713) 658-2323

ATTORNEYS FOR RESPONDENTS,
INTERNATIONAL DEVELOPMENT
CORPORATION and HOUSTON
TRANSFER & STORAGE CO.

CERTIFICATE OF SERVICE

I, Robert E. Morse, III, do hereby certify that a true and correct copy of the foregoing was served upon the following individuals on this the 16th day of July, 1988 by Federal Express shipment to the following addresses:

Mr. David Dodgen (6-E-ES)
U. S. Environmental Protection
Agency - Region VI
1445 Ross Avenue
Dallas, Texas 75202

Steven L. Parker, Esquire (6C-H)
Office of Regional Counsel
U. S. Environmental Protection
Agency - Region VI
1445 Ross Avenue
Dallas, Texas 75202-2733

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Mr. John C. Meyer (6H-EC)
Superfund Compliance Branch
U. S. Environmental Protection
Agency - Region VI
1445 Ross Avenue
Dallas, Texas 75202-2733

Mr. Peter P. Twining, Esquire
Vice President and Counsel
Copley Advisors
399 Boylston Street
Boston, Massachusetts 02116

ROBERT E. "ROBIN" MORSE, III

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